IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6657 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORAHMED @ NOOR ABDULMAJID KHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6657 of 2001

MR JK PARMAR for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on the 13th July, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA

Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration four registered offences against the petitioner and two statements of anonymous witnesses and branded him as a bootlegger. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Learned advocate for the petitioner, Mr. Parmar, assails this order mainly on the ground that the subjective satisfaction recorded by the detaining authority for exercising powers under Section 3 of the PASA Act for immediately preventing the petitioner from pursuing his activities is not genuine. In order to show this, he has drawn attention of this Court to the fact that the detenu was in judicial custody when the order was passed and served on him. The detaining authority has anticipated an application for bail that may be moved by the petitioner and then bail may be granted to the petitioner, which is not permissible and, therefore, the petition may be allowed.

4. Mr. S.S. Patel, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, the petition can be allowed on the sole ground canvassed by Mr. Parmar. The grounds of detention itself indicate that the detenu was in custody and anticipating an application for bail and grant of bail, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3675 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgment would be squarely applicable to the facts of the present case. Hence, this petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 13th July, 2001,

passed against the detenu is hereby quashed and set aside. The detenu-Noorahmed @ Noor Abdulmajidkhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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